



(2) Whether the Notice of Deficiency is barred by the statute of limitations?

(3) Whether penalties should be assessed pursuant to 35 ILCS 5/1001 and 5/1005?

Following a review of the documents contained in the file, it is recommended that the Notice of Deficiency be upheld in its entirety for the year ended December 31, 1989.

FINDINGS OF FACT:

1. For the taxable year ended December 31, 1989, taxpayer earned income and resided in Illinois. Dept. Ex. No. 1

2. Taxpayer did not file an original Illinois 1041 income tax return for the year ended December 31, 1989. Dept. Ex. No. 1

3. The Department issued a Notice of Deficiency for the subject taxable year. Dept. Ex. No. 1

4. In taxpayer's Protest, taxpayer did not submit evidence of the filing of an original IL-1041 return. However, taxpayer submitted a copy of an executed amended IL-1041 return for 1989 with a tax balance due of \$311.00. Additionally, taxpayer contended that the Notice was barred by the three year statute of limitations. Dept. Ex. No. 2

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayer contended that the Notice was barred by the 3 year statute of limitations of 35 ILCS 5/905(a)(1) since it filed an amended IL-1041 return on July 11, 1991. Taxpayer's contention, however, is incorrect since the statute of limitations does not begin until the filing of an original return. On this record, taxpayer has not offered any evidence of the filing of an original IL-1041 return. Therefore, the statute of limitations is not a defense to the subject Notice as per 35 ILCS 5/905(c).

Additionally, the fact that taxpayer did not file an original IL-1041 return prohibits the acceptance of the filing of an Amended IL-1041 return by the Department. An amended form or return is not the proper form for an original return. The amended IL-1041 return filed by taxpayer was not an amended return since no original return had been filed and no taxes had been remitted with the original return. See. *The Holding Company v. The Department of Revenue*, 214 Ill.App.3d 390, 594 NE 2d 11 (1st Dist. 1991) Accordingly, taxpayer was subject to Illinois income taxes for the year ended December 31, 1989, was required to timely file an original IL-1041 return for 1989 and remit the correct taxes due pursuant to the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978). The taxpayer has not met that burden on this record.

In addition to asserting a tax deficiency for 1989, the Notice proposes penalties pursuant to 35 ILCS 5/1001 and 5/1005 for failure to file and failure to pay the entire tax liability by the due date. Having determined that the taxpayer was an Illinois resident in 1989, and that the estate failed to file an original IL-1041 return and pay income tax with said return for the 1989 tax year, the imposition of said penalties is justified.

RECOMMENDATION: It is my recommendation that the subject Notice of Deficiency be upheld in its entirety.

James P. Pieczonka  
Administrative Law Judge

July 6, 1995